

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

TAVARIS L. MOSS,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-11-154-D
)	
JOHN MIDDLETON, Assistant Warden,)	
in his personal and official capacity;)	
JOSEPH TAYLOR, Warden,)	
in his personal and official capacity;)	
JOHN HILLIGOSS, Unit Manager,)	
in his personal and official capacity;)	
DON STEER, Chief of Security,)	
in his personal and official capacity;)	
LAUREL BOGERT, Case Manager,)	
in her personal and official capacity;)	
TOMMY BATTLES, Senior Officer (Sgt.),)	
in his personal and official capacity;)	
RAY CHOATES, Unit Manager,)	
in his personal and official capacity;)	
and JUSTIN JONES, Director of Okla.)	
Dept. of Corrections, in his)	
personal and official capacity,)	
)	
Defendants.)	

Report and Recommendation:
The Plaintiff's Motion for Default Judgment

The Plaintiff has filed a motion for a default judgment. In the second sentence, Mr. Moss states that the Clerk entered a default against "the Defendant" on July 21, 2011. Doc. 47. The Clerk has not entered a default against any parties. On July 22, 2011, the Plaintiff requested entry of a default against Justin Jones. Doc. 42. The following business day, the Clerk denied the request and explained that Mr. Jones' response deadline was actually July

25, 2011. Doc. 43. On that day, Mr. Jones filed a motion for dismissal or summary judgment. Doc. 46. With the filing of this motion, Mr. Jones' deadline for an answer was automatically postponed under Fed. R. Civ. P. 12(a)(4)(A). Because Mr. Jones is not out-of-time, the Court should deny Mr. Moss' motion for a default judgment.¹

The parties can object to this report and recommendation. To object, the party must file an objection with the Clerk of this Court by August 15, 2011. *See* Fed. R. Civ. P. 6(a)(1)(C), 6(d), 72(b)(2); 28 U.S.C. § 636(b)(1) (2009 supp.). The failure to timely object would foreclose appellate review of the suggested ruling.²

The present report does not discharge the referral.

Entered this 27th day of July, 2011.


Robert E. Bacharach
United States Magistrate Judge

¹ The Court assumes that the motion for a default judgment is being asserted against Mr. Jones, but the Plaintiff does not identify the parties subject to his motion. The other defendants had filed a motion to dismiss on July 18, 2011 (Doc. 40), prior to Mr. Moss' request for entry of a default.

² *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991); *see also Marshall v. Chater*, 75 F.3d 1421, 1426 (10th Cir. 1996) ("Issues raised for the first time in objections to the magistrate judge's recommendation are deemed waived.").